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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 DEVELL MOORE,

10 *Petitioner,*

11 vs.
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13 LEGRAND, *et al.*,

14 *Respondents.*
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No. 3:13-cv-00390-LRH-WGC

ORDER

16 This habeas matter comes before the Court following upon the notice (#13) of appearance by
17 petitioner's counsel.

18 IT THEREFORE IS ORDERED that the Federal Public Defender's Office is appointed as
19 counsel for petitioner pursuant to 18 U.S.C. § 3006A(a)(2)(B), with Jason F. Carr, Esq., appearing as
20 petitioner's counsel of record.

21 IT FURTHER IS ORDERED that petitioner shall have until up to and including **one hundred**
22 **fifty (150) days** from entry of this order within which to file an amended petition and/or seek other
23 appropriate relief. Neither the foregoing deadline nor any extension thereof signifies or will signify any
24 implied finding as to the expiration of the federal limitation period and/or of a basis for tolling during
25 the time period established. Petitioner at all times remains responsible for calculating the running of
26 the federal limitation period and timely asserting claims, without regard to any deadlines established
27 or extensions granted herein. That is, by setting a deadline to amend the petition and/or by granting any
28 extension thereof, the Court makes no finding or representation that the petition, any amendments

1 thereto, and/or any claims contained therein are not subject to dismissal as untimely. *See Sossa v. Diaz*,
2 729 F.3d 1225, 1235 (9th Cir. 2013).

3 IT FURTHER IS ORDERED that respondents shall file a response to the amended petition,
4 including potentially by motion to dismiss, within **sixty (60) days** of service of the amended petition,
5 with any requests for relief by petitioner by motion otherwise being subject to the normal briefing
6 schedule under the local rules. Any response filed shall comply with the remaining provisions below,
7 which are entered pursuant to Habeas Rule 4.

8 IT FURTHER IS ORDERED that any procedural defenses raised by respondents to the
9 counseled amended petition shall be raised together in a single consolidated motion to dismiss. In other
10 words, the Court does not wish to address any procedural defenses raised herein either in *seriatum*
11 fashion in multiple successive motions to dismiss or embedded in the answer. Procedural defenses
12 omitted from such motion to dismiss will be subject to potential waiver. Respondents shall not file a
13 response in this case that consolidates their procedural defenses, if any, with their response on the
14 merits, except pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit.
15 If respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they shall do so within
16 the single motion to dismiss **not** in the answer; and (b) they shall specifically direct their argument to
17 the standard for dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th
18 Cir. 2005). In short, no procedural defenses, including exhaustion, shall be included with the merits
19 in an answer. All procedural defenses, including exhaustion, instead must be raised by motion to
20 dismiss.

21 IT FURTHER IS ORDERED that, in any answer filed on the merits, respondents shall
22 specifically cite to and address the applicable state court written decision and state court record
23 materials, if any, regarding each claim within the response as to that claim.


24 IT FURTHER IS ORDERED petitioner shall have thirty (30) days from service of the answer,
25 motion to dismiss, or other response to file a reply or opposition, with any other requests for relief by
26 respondents by motion otherwise being subject to the normal briefing schedule under the local rules.

27 IT FURTHER IS ORDERED that any state court record and related exhibits filed herein by
28 either petitioner or respondents shall be filed with a separate index of exhibits identifying the exhibits

1 by number. The CM/ECF attachments that are filed further shall be identified by the number or
2 numbers of the exhibits in the attachment.

3 IT FURTHER IS ORDERED that the hard copy of any exhibits filed by either counsel shall be
4 delivered -- for this case -- to the Reno Clerk's Office.

5 DATED this 13th day of August, 2014.

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8 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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